

## INSURANCE DIVISION[191]

### Notice of Intended Action

#### **Proposing rule making related to surplus lines insurers and rules review updates and providing an opportunity for public comment**

The Insurance Division (Division) hereby proposes to amend Chapter 21, “Requirements for Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 515E.14 and 515I.15.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 515E and chapter 515I as amended by 2019 Iowa Acts, Senate File 558.

#### *Purpose and Summary*

The Division proposes to amend the current rules in Chapter 21 as part of the Division’s five-year review of rules and to implement the changes in 2019 Iowa Acts, Senate File 558, which allows for domestic surplus lines insurers to be eligible surplus lines insurers.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

The Division’s general waiver provisions of 191—Chapter 4 apply to these rules.

#### *Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Division no later than 4 p.m. on September 23, 2019. Comments should be directed to:

Tracy Swalwell  
Iowa Insurance Division  
Two Ruan Center  
601 Locust Street, Fourth Floor  
Des Moines, Iowa 50309  
Phone: 515.725.1249  
Fax: 515.281.3059  
Email: [tracy.swalwell@iid.iowa.gov](mailto:tracy.swalwell@iid.iowa.gov)

#### *Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 23, 2019  
10 to 11 a.m.

Division Offices, Fourth Floor  
Two Ruan Center  
601 Locust Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend **191—Chapter 21** as follows:

CHAPTER 21  
REQUIREMENTS FOR SURPLUS LINES,  
RISK RETENTION GROUPS AND PURCHASING GROUPS  
[Prior to 10/22/86, Insurance Department[510]]

**191—21.1(515E,515I) Definitions.** In addition to the definitions provided in Iowa Code chapters 515E and 515I as amended by 2019 Iowa Acts, Senate File 558, the following definitions shall apply to this chapter, unless the context clearly requires otherwise:

“*Division*” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapters 515E and 515I.

“*Division’s Web-site website*” means the ~~Web-site~~ [website](#) of the Iowa insurance division, [www.iid.iowa.gov](#) ~~iid.iowa.gov~~.

“*Place*” ~~or “places”~~ means obtaining insurance for an insured with a specific insurer.

**191—21.2(515I) Eligible surplus lines insurer’s duties.**

**21.2(1) *Insurer liable.*** Where, pursuant to Iowa Code chapter 515I, coverage is placed with an eligible surplus lines insurer, but the surplus lines insurance producer fails to pay to the ~~state of Iowa~~ division the premium tax required by Iowa Code section 515I.3(2) and rule ~~191—21.3(515)~~ 191—21.3(515I), the eligible surplus lines insurer ~~shall be liable for~~ must pay the premium tax required by Iowa Code chapter 515I and this chapter.

**21.2(2) *How premium tax quoted.*** An eligible surplus lines insurer or a ~~broker~~ surplus lines producer for an eligible surplus lines insurer is authorized to quote a premium which includes tax as is required by Iowa Code chapter 515I, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component ~~when promulgated~~. Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

**191—21.3(515I) Surplus lines insurance producer’s duties.**

**21.3(1) *Surplus lines insurance producer’s collection of tax.*** A surplus lines insurance producer who places insurance with an eligible surplus lines insurer ~~shall~~ must collect premium tax from the eligible surplus lines insurer by withholding 1 percent of the premiums for such tax.

**21.3(2) *Electronic reporting of premium tax.*** A surplus lines insurance producer who places insurance with an eligible surplus lines insurer ~~shall~~ must file electronically the premium tax information with the division, as instructed on the division's website, on or before March 1 for policies issued during the preceding calendar year.

**21.3(3) *Annual report.*** On or before March 1 of each year, every surplus lines insurance producer who has placed insurance with an eligible surplus lines insurer when the policies have been issued during the preceding calendar year ~~shall~~ must file electronically with the division, or as otherwise directed by the division, a sworn report and supporting documentation, as instructed on the division's website, which may include evidence of a diligent search required pursuant to Iowa Code section 515I.3, of all such business written during the preceding calendar year and ~~shall~~ must submit the amount to cover the taxes due on all such business. The manner of filing electronically and the content of the report and required supporting documentation are listed on the division's website. If no business was ~~written~~ issued during the preceding calendar year, no report is required. Failure to file an annual report or pay the taxes imposed by Iowa Code chapter 515I will be deemed grounds for the revocation of a surplus lines insurance producer's license by the division, and failure to file an annual report or pay taxes within the time requirements of this rule will subject the surplus lines insurance producer to the penalties of Iowa Code section 515I.12.

**191—21.4(515I) Surplus lines insurance producer's duty to insured.** A surplus lines insurance producer who places coverage with an eligible surplus lines insurer ~~as defined in Iowa Code section 515I.2~~ shall must deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code chapter 515I, by ~~a nonadmitted company~~ an eligible surplus lines insurer in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A surplus lines insurance producer may comply with this rule by verifying disclosure of this language in a clear and conspicuous position on the policy or by electronic delivery authorized by Iowa Code chapter 505B, if the method of delivery of the notice allows the division, the surplus lines insurance producer and the intended recipient to verify receipt of the specific notice.

**191—21.5(515I) Procedures for qualification and renewal ~~of a nonadmitted insurer~~ as an eligible surplus lines insurer.**

**21.5(1) *Application and procedures for initial qualification ~~of a nonadmitted insurer~~ as an eligible surplus lines insurer.***

a. Any nonadmitted insurer or domestic surplus lines insurer who wishes to qualify under Iowa Code chapter 515I as an eligible surplus lines insurer ~~shall~~ must make an application with the division, as instructed on the division's website.

b. ~~The nonadmitted insurer's~~ application ~~shall~~ must contain the following information, which also is listed on the division's ~~Web site~~ website:

(1) A completed National Association of Insurance Commissioners (NAIC) form as follows, available through the division's website or NAIC website, [www.naic.org/industry](http://www.naic.org/industry), or another form as prescribed by the division:

1. For a nonadmitted insurer, a NAIC Uniform Certificate of Authority Application (NAIC UCAA) Expansion Application, available through the division's Web site or through the NAIC Web site, [www.naic.org/industry](http://www.naic.org/industry); or

2. For a domestic surplus lines insurer, a NAIC UCAA Primary Application.

(2) The name of an ~~Iowa-licensed~~ Iowa resident surplus lines insurance producer ~~qualified in Iowa to write surplus lines insurance~~, whom the ~~nonadmitted~~ insurer is designating as the person to accept inquiries and notices on behalf of the ~~nonadmitted~~ insurer.

(3) ~~Remittance of~~ Payment of the greater of a \$100 filing fee or a retaliatory fee, and ~~a \$500~~ an examination fee for all new applicants.

(4) Demonstrated maintenance of the capital and surplus required pursuant to Iowa Code chapter 515I.

c. In addition to the above requirements, the nonadmitted insurer ~~shall~~:

(1) ~~Maintain the greater of either minimum capital and surplus of \$5 million or risk-based capital pursuant to Iowa Code chapter 521E, and~~

(2) ~~Have~~ must have been actively in operation for at least three years without significant changes in ownership or management during the three-year period.

~~These financial and management requirements may be waived by the division upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The division may require other information as deemed necessary.~~

**21.5(2) Procedures for renewal of ~~a nonadmitted~~ an insurer as an eligible surplus lines insurer.** ~~A nonadmitted~~ An eligible surplus lines insurer that is not an alien insurer as defined in Iowa Code section 515.70 and that was approved by the division as an eligible surplus lines insurer shall, except for an alien insurer under Iowa Code section 515I.2(7) “b,” must by March 1 of each year following the year of approval:

- ~~a. Continue to comply~~ Be in compliance with paragraph 21.5(1) “e” subparagraph 21.5(1) “b” (4);
- ~~b. Pay the greater of a \$100 renewal fee or a retaliatory fee; and~~
- ~~c. Submit to the division the documents and materials listed on the division’s Web site~~ website.

**21.5(3) Periodic reporting.** An eligible surplus lines insurer, except for an alien insurer under Iowa Code section 515I.2(7) “b,” must submit quarterly financial statements to the division as instructed on the division’s website.

**21.5(3) 21.5(4) Failure to comply with renewal procedures.** ~~Failure of a nonadmitted~~ an eligible surplus lines insurer to timely submit the renewal materials required in this rule or to otherwise fail to comply with this rule shall by subrule 21.5(2) will result in the automatic termination of the ~~nonadmitted~~ insurer’s status as an eligible surplus lines insurer.

#### **191—21.6(515E) Procedures for qualification as a risk retention group.**

**21.6(1)** Any insurer who wishes to register under Iowa Code chapter 515E as a risk retention group shall ~~file with the division an application that contains:~~

- ~~a. The~~ Must file with the division an application that contains information required by Iowa Code section 515E.4, which also is listed on the division’s ~~Web site~~ website; and
- ~~b. Remittance~~ Pay the greater of a \$100 filing fee plus any additional or a retaliatory fees fee and, for all new applicants, an examination fee.

**21.6(2)** A risk retention group shall ~~must~~ pay a \$100 renewal fee by March 1 of each year following the year of registration. The risk retention group shall ~~must~~ annually provide information requested by the division for determination of continued registration.

**191—21.7(515E) Risk retention groups.** ~~A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, the producers shall must file the premium tax information electronically with the division through the division’s Web site~~ website on or before March 1 for policies issued during the preceding calendar year.

#### **191—21.8(515E) Procedures for ~~qualification~~ registration as a purchasing group.**

**21.8(1)** Prior to doing business in this state, a purchasing group shall ~~must~~ furnish to the division notice that ~~shall include~~ includes:

- ~~a. The information set forth in Iowa Code section 515E.8, which also is listed on the division’s Web site~~ website; and
- ~~b. Designation of the commissioner for service of process, as set forth in Iowa Code section 515E.8(3); and~~

~~b. c.~~ Remittance of a \$100 filing fee.

**21.8(2)** A registered purchasing group shall ~~must~~ pay a \$100 renewal fee by March 1 of each year following the year of registration. The purchasing group must provide information requested by the division for determination of continued registration.

**191—21.9(515E,515I) Failure to comply; penalties.** Failure of a producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code chapters 515E and 515I may subject the producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code ~~chapter~~ chapters 507B, 515E or and 515I.

These rules are intended to implement Iowa Code ~~sections 515.120 to 515.122~~ chapters 515I and 515E.